

1 DANIEL L. WARSHAW (Bar No. 185365)
dwarshaw@pswplaw.com
2 **PEARSON, SIMON, WARSHAW & PENNY, LLP**
15165 Ventura Boulevard, Suite 400
3 Sherman Oaks, CA 91403
Telephone: (818) 788-8300
4 Facsimile: (818) 788-8104

5 JAMES J. PIZZIRUSSO (pro hac vice)
jpizzirusso@hausfeldllp.com
6 **HAUSFELD, LLP**
1700 K Street NW
7 Washington, DC 20006
Telephone: (202) 540-7200
8 Facsimile: (202) 540-7201

9 [Additional counsel listed on signature pages]

10 Attorneys for Plaintiff Joshua Kairoff and All
Others Similarly Situated

11

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

14

15 JOSHUA KAIROFF, on Behalf of Himself
and All Others Similarly Situated,

16

Plaintiffs,

17

vs.

18

DROPBOX, INC., a Delaware corporation,

19

Defendant.

20

CASE NO. CV 11-02508 PJH

21 **NOTICE OF AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF KAIROFF'S
MOTION FOR APPOINTMENT OF
INTERIM CO-LEAD COUNSEL**

Date: August 10, 2011

Time: 9:00 a.m.

Crtrm.: 3, 3rd Floor

The Honorable Phyllis J. Hamilton

22

23

24

25

26

27

28

TABLE OF CONTENTS

	<u>Page</u>
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. LEGAL STANDARD	2
IV. ARGUMENT	3
A. THE COURT SHOULD APPOINT PSWP AND HAUSFELD AS INTERIM LEAD CLASS COUNSEL.....	3
B. PSWP AND HAUSFELD WILL BEST BE ABLE TO REPRESENT THE PUTATIVE NATIONWIDE CLASS	12
1. PSWP and Hausfeld have performed significant work in investigating and prosecuting this case.	12
2. Hausfeld LLP and PSWP have the experience necessary to serve as Interim Lead Class Counsel and have extensive knowledge of the applicable law.	12
3. PSWP and Hausfeld have the staffing and resources necessary to aggressively prosecute this case.	13
4. PSWP and Hausfeld will work cooperatively with all other interested counsel to achieve the best result possible for the Class.	14
V. CONCLUSION	15

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Four in One Co. v. SK Foods, L.P.</i> , No. 2:08-cv-03017-MCE-EFB, 2009 WL 747160 (E.D. Cal. Mar. 19, 2009)	3, 9, 10
<i>Hart v. Central Sprinkler Corporation</i> , Los Angeles County Superior Court, Case No. BC176727	7
<i>In re Air Cargo Shipping Serv. Antitrust Litig.</i> , 240 F.R.D. 56 (E.D.N.Y. 2006)	3
<i>In re California Title Ins. Antitrust Litig.</i> , No. 08-cv-01341, 2008 WL 4820752 (N.D. Cal. Nov. 3, 2008).....	2
<i>In re Graphics Processing Units Antitrust Litig.</i> , MDL No. 1826 (N.D. Cal.)	11
<i>In re High Pressure Laminates Antitrust Litig.</i> , MDL No. 1368 (S.D.N.Y.).....	11
<i>In re International Air Transport Surcharge Antitrust Litig.</i> , MDL No. 1793 (N.D. Cal.)	9, 10
<i>In re Municipal Derivatives Antitrust Litig.</i> , MDL No. 1950 (S.D.N.Y.).....	10
<i>In re NASDAQ Market-Makers Antitrust Litig.</i> , 169 F.R.D. 493 (S.D.N.Y. 1996).....	13
<i>In re Publication Paper Antitrust Litig.</i> , MDL No. 1631 (D. Conn.)	10
<i>In Re Sony PS 3 “Other OS” Litigation</i> , Case No. C 10-1811 RS (N.D. Cal.)	11
<i>In Re TFT-LCD (Flat Panel) Antitrust Litigation</i> , 267 F.R.D. 291 (N.D. Cal. 2010)	3, 5-7, 14
<i>In re Transpacific Passenger Air Transportation Antitrust Litig.</i> , MDL No. 1913 (N.D. Cal.)	10
<i>In re Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation</i> , 1:08-md-01982-RDB, 2010 WL 1924012 (D.Md. May 11, 2010).....	11, 14
<i>Khan v. Denny’s Holdings, Inc.</i> , Los Angeles County Superior Court, Case No. BC177254	7

1	<i>Kosnik v. Carrows Restaurants, Inc.,</i> Los Angeles County Superior Court, Case No. BC219809	7
2		
3	<i>Nguyen v. First USA N.A.,</i> Los Angeles County Superior Court, Case No. BC222846	7
4		
5	<i>Parkinson v. Hyundai Motor Am.,</i> No. CV06-345AHS	3
6		
7	<i>Pelletz v. Weyerhaeuser Co.,</i> 255 F.R.D. 537 (W.D. Wa. 2009) (“ChoiceDek”)	11, 13, 14
8		
9	<i>Radost v. Envision EMI, LLC,</i> --- F.Supp.2d ---, 2011 WL 159662 (D.D.C. January 19, 2011)	11, 14
10		
11	<i>Ross v. Trex Co., Inc.,</i> No. 5:09-CV-00670, 2009 WL 2365865 (N.D.Cal. July 30, 2009)	11, 14
12		
13	<i>Wiener v. Dannon Co.,</i> 255 F.R.D. 658 (C.D. Cal. 2009)	13
14		
15	<i>Wolph v. Acer America Corp.,</i> No. C 09-01314 JSW, 272 F.R.D. 477 (N.D. Cal. 2011).....	1, 11
16		
17	STATUTES	
18	Cal. Bus. & Prof. Code § 17200.....	2
19		
20	Cal. Bus. & Prof. Code § 17500.....	2
21		
22	OTHER AUTHORITIES	
23	Fed. R. Civ. P. 23	3
24		
25	Fed. R. Civ. P. 23(g).....	1, 3, 14
26		
27	Fed. R. Civ. P. 23(g)(1).....	2
28		
29	Fed. R. Civ. P. 23(g)(1)(A)	2
30		
31	Fed. R. Civ. P. 23(g)(1)(A)(iv).....	13
32		
33	Fed. R. Civ. P. 23(g)(1)(B).....	3, 14
34		
35	Fed. R. Civ. P. 23(g)(2)	3
36		
37	Fed. R. Civ. P. 23(g)(3)	2
38		
39	Fed. R. Civ. P. 23(g)(a)(1)(A)	3
40		
41	Fed. R. Civ. P. 23(g)(a)(1)(B)	3

1	Fed. R. Civ. P. 42	1
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

NOTICE OF MOTION

PLEASE TAKE NOTICE that, pursuant to Rules 23(g) and 42 of the Federal Rules of Civil Procedure, on August 10, 2011 at 9:00 a.m., before the Honorable Phyllis J. Hamilton of the Northern District of California, Plaintiff Joshua Kairoff will and hereby does move for an order appointing Pearson, Simon, Warshaw & Penny, LLP and Hausfeld LLP as interim, co-lead Class Counsel. This Motion is based on the Notice of Motion, the accompanying Memorandum of Points and Authorities, and the Declarations of Daniel Warshaw and James Pizzirusso, the papers on file in the matters, and the arguments of counsel, and any other matter the Court wishes to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By way of this motion, Pearson, Simon, Warshaw & Penny, LLP (“PSWP”) and Hausfeld LLP (“Hausfeld”) seek appointment as Interim Co-Lead Class Counsel.

This case can be well overseen by two Co-Lead Class Counsel who will be responsible to the Court and the Class, and responsive to Defendant Dropbox, Inc. (“Dropbox”). In this case, Hausfeld and PSWP are highly qualified to fill this role. Since the inception of this case (and before), Hausfeld and PSWP have expended considerable time and effort developing the case, and are fully committed to reaching a favorable resolution for aggrieved consumers. Hausfeld and PSWP currently serve as Co-Lead Class Counsel in another certified nationwide class action pending in the Northern District of California – a case involving falsely marketed Acer computers that will likely address many of the same legal issues that may be present here. *See Wolph v. Acer America Corp*, No. C 09-01314 JSW, 272 F.R.D. 477 (N.D. Cal. 2001) (motion for class certification granted). Moreover, these two firms currently serve as Lead Class Counsel in dozens of class actions around the country and have obtained some of the largest verdicts and settlements that have ever been reached on behalf of class members. In short, their Co-Leadership credentials are unmatched.

For all of these reasons, and as detailed more fully below, PSWP and Hausfeld respectfully request that the Court grant their motion.

1 **II. BACKGROUND**

2 As laid out in further detail in Plaintiff's Complaint, this case involves a popular Internet
 3 based file storage, synchronization, and sharing software program that allows users to store and
 4 access their documents, media and other files on multiple devices. Plaintiff alleges that in order
 5 to induce consumers to purchase and utilize Dropbox, Defendant made numerous false and
 6 misleading misrepresentations, including claims that user files are "always safe," "inaccessible by
 7 third parties including Dropbox employees" and stored utilizing "the best tools and engineering
 8 practices available." *See*, Complaint (Dkt. No. 1). Contrary to these representations, Dropbox
 9 does not in fact utilize the most secure methods available to protect its data from access to third
 10 parties, allows employees to have access to user data, and has failed to take adequate measures to
 11 protect sensitive financial, business and private user information from unauthorized access.
 12 Indeed, during the class period and unbeknownst to users, Dropbox accessed purportedly
 13 encrypted and secure customer data in order to eliminate duplicate files from being uploaded on
 14 its server and in turn save money on bandwidth and storage costs. Plaintiffs' complaint contains
 15 claims for breach of express and implied warranties, and for violations of the California
 16 Consumer Legal Remedies Act, Cal. Bus. & Prof. Code § 17500, and Cal. Bus. & Prof. Code
 17 § 17200.

18 **III. LEGAL STANDARD**

19 Pursuant to Fed. R. Civ. P. 23(g)(3), this Court may "designate interim counsel to act on
 20 behalf of a putative class before determining whether to certify the action as a class action." In
 21 doing so, the Court should:

22 inquire into the work counsel has done in investigating and
 23 identifying the particular case; counsel's experience in handling
 24 class actions, other complex litigation, and claims of the type
 25 asserted in the action; counsel's knowledge of the applicable law;
 the resources counsel will commit to representing the class; and any
 other factors that bear on the attorney's ability to represent the class
 fairly and adequately.

26 Manual for Complex Litigation-4th at ¶ 21.271. These factors for appointing interim class
 27 counsel are drawn from the Rule 23(g)(1) factors for selecting class counsel. *See In re California*
Title Ins. Antitrust Litig., No. 08-cv-01341, 2008 WL 4820752, at *1 (N.D. Cal. Nov. 3, 2008)

1 (“[w]hen appointing interim class counsel, a court must find that the applicant is adequate under
 2 [Rule 23(g)(1)(A) and (B)].”); *Four in One Co. v. SK Foods, L.P.*, No. 2:08-cv-03017-MCE-EFB,
 3 2009 WL 747160, at *1, *3 (E.D. Cal. Mar. 19, 2009) (same).¹

4 Courts may also “consider any other matter pertinent to counsel’s ability to fairly and
 5 adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). While “[n]o single
 6 factor should necessarily be determinative in a given case,” Fed. R. Civ. P. 23 Advisory
 7 Committee Note (2003), the experience and ability of the firms to handle class action litigation
 8 becomes crucial when all firms have undertaken independent investigations into the underlying
 9 facts and legal claims. If more than one adequate applicant seeks to be designated, “the court
 10 must appoint the applicant *best able* to represent the interests of the class.” *See* Fed. R. Civ. P.
 11 23(g)(2) (emphasis added). Further, a court may appoint more than one firm to act in a leadership
 12 capacity. *See, e.g., SK Foods*, 2009 WL 747160, at *3 (appointing two firms as co-lead counsel,
 13 including Hausfeld) and *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, 267 F.R.D. 291, 316
 14 (N.D. Cal. 2010) (appointing two firms as co-lead counsel, including PSWP).

15 **IV. ARGUMENT**

16 The standards outlined above strongly support the designation of PSWP and Hausfeld as
 17 Interim Lead Class Counsel.

18 **A. THE COURT SHOULD APPOINT PSWP AND HAUSFELD AS INTERIM
 19 LEAD CLASS COUNSEL**

20 **1. Pearson, Simon, Warshaw & Penny, LLP (“PSWP”)**

21 PSWP is a civil litigation firm that specializes in class actions, with offices in San
 22 Francisco and Los Angeles. The firm handles national and multi-national class actions that
 23 present cutting edge issues in both substantive and procedural areas. The firm’s attorneys have
 24 expertise in litigating difficult and large cases in an efficient and cost effective manner. The

25 ¹ *See also In re Air Cargo Shipping Serv. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006)
 26 (“[I]t appears to be generally accepted that the considerations set out in [Fed. R. Civ. P.
 27 23(g)(a)(1)(A) and (B)], which governs appointment of class counsel once a class is certified,
 28 apply equally to the designation of interim class counsel before certification” and appointing
 Hausfeld LLP as one of the class counsel); *Parkinson v. Hyundai Motor Am.*, No. CV06-345AHS
 (MLGX) *et al.*, 2006 WL 2289801, at *2 (C.D. Cal. Aug. 7, 2006) (“Rule 23(g) provides criteria
 to consider when appointing class counsel, without distinguishing interim counsel. Presumably,
 the same factors apply, however.”).

1 following is a partial list of the consumer and employment class actions in which attorneys at
2 PSWP have been appointed as Class Counsel:

3 *In re AEFA Overtime Cases*, Los Angeles County Superior Court,
4 Judicial Council Coordination Proceeding No. 4321. PSWP
5 attorneys served as class counsel in this overtime class action on
behalf of American Express Financial Advisors, which resulted in
an outstanding classwide settlement.

6 *Baker v. Charles Schwab & Co., Inc.*, Los Angeles County
7 Superior Court, Case No. BC286950. PSWP attorneys served as
8 class counsel for investors who were charged a fee for transferring
out assets between June 1, 2002 and May 31, 2003. This case
9 resulted in a nationwide settlement.

10 *Castillo v. Pizza Hut, Inc.*, Los Angeles County Superior Court,
11 Case No. BC318765. PSWP attorneys served as lead class counsel
12 in this California class action brought by delivery drivers who
claimed they were not adequately compensated for use of their
13 personally owned vehicles. This case resulted in a nationwide
class settlement.

14 *Eallonardo v. Metro-Goldwyn-Mayer, Inc.*, Los Angeles County
15 Superior Court, Case No. BC286950. PSWP attorneys served as
16 class counsel on behalf of a nationwide class of consumers who
17 purchased DVDs manufactured by Defendants. Plaintiffs alleged
that Defendants had engaged in false and misleading advertising
18 relating to the sale of its DVDs. This case resulted in a nationwide
class settlement.

19 *Hart v. Central Sprinkler Corporation*, Los Angeles County
20 Superior Court, Case No. BC176727. PSWP attorneys served as
21 class counsel in this consumer class action arising from the sale of
nine million defective sprinkler heads. This case resulted in a
nationwide class settlement.

22 *In re iPod nano Cases*, Los Angeles County Superior Court,
23 Judicial Counsel Coordination Proceeding No. 4469. PSWP
24 attorneys were appointed co-lead counsel for this class action
brought on behalf of California consumers who own defective iPod
25 nanos.

26 *Khan v. Denny's Holdings, Inc.*, Los Angeles County Superior
27 Court, Case No. BC177254. PSWP attorneys settled a class action
lawsuit against Denny's Restaurants for non-payment of overtime
wages to its managers and general managers.

1 *Kosnik v. Carrows Restaurants, Inc.*, Los Angeles County Superior
 2 Court, Case No. BC219809. PSWP attorneys settled a class action
 3 lawsuit against Carrows Restaurants for non-payment of overtime
 wages to its assistant managers and managers.

4 *Morales v. Associates First Financial Capital Corporation*, San
 5 Francisco Superior Court, Judicial Council Coordination
 6 Proceeding No. 4197. PSWP attorneys served as class counsel in
 7 this case arising from the wrongful sale of credit insurance in
 connection with personal and real estate-secured loans. This case
 resulted in an extraordinary \$240 million recovery for the Class.

8 *Nguyen v. First USA N.A.*, Los Angeles County Superior Court,
 9 Case No. BC222846. PSWP attorneys served as class counsel on
 10 behalf of approximately four million First USA credit card holders
 11 whose information was sold to third party vendors without their
 consent. This case ultimately settled for an extremely valuable
 permanent injunction plus disgorgement of profits to worthy
 charities.

12 *Olson v. Volkswagen of America, Inc., et al.*, Central District of
 13 California, Case No. CV07-05334. PSWP attorneys served as
 14 class counsel in a class action against Volkswagen of America and
 15 Audi of America. The lawsuit alleged that the 1999 Volkswagen
 16 Passat, the 2000-2003 Audi TT, and the 2000-2003 Audi A4
 17 equipped with a 1.8 liter turbo engine, had defectively designed
 18 timing belt systems and defective service and inspection intervals
 19 for the timing belt system. The lawsuit resulted in a settlement
 which provided for a full refund of repair charges associated with
 class members who suffered past timing belt failures and an
 extended warranty that will protect class members against expenses
 incurred from future timing belt failures.

20 *Wolph v. Acer America Corp.*, Northern District of California,
 21 Case No. C 09-01314. PSWP attorneys currently serve as Co-Lead
 22 Counsel in this certified nationwide class action involving
 23 defective Acer computers, that addresses many of the same issues
 as the instant case will likely present here.

24 The attorneys at PSWP have been recognized as national leaders in the field of class
 25 actions. They have represented a wide range of clients in numerous class actions and have
 26 obtained hundreds of millions of dollars in settlements and verdicts on behalf of their clients. In
 27 addition to the above mentioned cases, attorneys at PSWP currently serve as co-lead counsel in
 28 the prominent cases *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal., MDL No. 1827),

1 and hold, or have held, leadership roles in various other notable complex litigation and class
 2 action cases. With strategically located offices in Los Angeles and San Francisco, PSWP is at the
 3 forefront of significant consumer and complex business litigation, and is able to effectively and
 4 resourcefully represent the putative Class in this case. The attorneys who will be working on this
 5 case include the following experienced class action attorneys:

6 **Bruce L. Simon** is a name partner who specializes in complex litigation and class actions.
 7 While at his prior firm, Mr. Simon served as lead or co-lead counsel in several nationwide
 8 antitrust class actions, including: *In re Sodium Gluconate Antitrust Litigation* (N.D. Cal., MDL
 9 No. 1226), an antitrust case involving a food additive product; *In re Methionine Antitrust
 10 Litigation* (N.D. Cal., MDL No. 1311), an antitrust class action that resulted in over \$100 million
 11 in settlements; and *In re Citric Acid Antitrust Litigation* (N.D. Cal., MDL No. 1092), which
 12 resulted in over \$80 million in settlements for direct purchasers.

13 More recently, Mr. Simon, on behalf of his prior firm, served as co-chair of discovery in
 14 *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation* (N.D. Cal., MDL No. 1486),
 15 which settled for over \$325 million to the direct purchaser class. In that case, Mr. Simon and co-
 16 counsel supervised the review of a multi-million page electronic document production and the
 17 taking of over 100 depositions, all in coordination with the indirect purchaser plaintiffs and the
 18 government. Currently, Mr. Simon is serving as interim co-lead counsel for the direct purchaser
 19 plaintiffs in *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal., MDL No. 1827).
 20 Accordingly, Mr. Simon is experienced in handling the legal and factual issues that are
 21 anticipated in this proceeding.

22 Not only has Mr. Simon effectively managed cases through pretrial proceedings, but he
 23 has also taken many complex cases to trial. For example, he tried the *Osborne Securities* case in
 24 Santa Clara County and won a multi-million dollar jury verdict. That case involved critical issues
 25 about the responsibilities of accountants and eventually went to the Supreme Court, setting
 26 standards for accounting liability in California. He also represented Union Bank in a case against
 27 a national accounting firm and obtained a \$7 million jury verdict that was upheld on appeal.

28

1 Mr. Simon is a frequent speaker on trial strategies in business cases, and he has lectured
 2 throughout the United States and internationally. He is a past chair of the California State Bar's
 3 Antitrust and Unfair Competition Section and the Business Torts Section of the American Trial
 4 Lawyers Association. Mr. Simon is the co-author of the *Matthew Bender Practice Guide:*
 5 *California Unfair Competition and Business Torts* (2004), which provides in-depth and practical
 6 coverage of the state's Unfair Competition Law, as well as antitrust law and other commonly
 7 prosecuted business torts. He is also the immediate past chair of the Board of Directors for
 8 Hastings College of the Law.

9 **Daniel L. Warshaw** is a name partner with extensive experience arguing complex
 10 litigation and class action cases. He has served as Class Counsel in numerous cases, including: *In*
 11 *re Homestore Litigation* (a securities class action); *In re Automotive Refinishing Paint Cases* (an
 12 antitrust case alleging price-fixing by Defendants of automotive refinishing products); *Rueda v.*
 13 *Schlumberger Resources Management Services, Inc.* (a class action involving customers of the
 14 Los Angeles Department of Water & Power who had lead leaching water meters installed on their
 15 property); *Hart v. Central Sprinkler Corporation*; *In re iPod nano Cases*; *Nguyen v. First USA*
 16 *N.A.*; *Morales v. Associates First Financial Capital Corporation*; *In re AEFA Overtime Cases*;
 17 *Khan v. Denny's Holdings, Inc.*; and *Kosnik v. Carrows Restaurants Inc.* Mr. Warshaw also
 18 served as Class Counsel in *Olson v. Volkswagen of America, Inc., et al*, where he was
 19 instrumental in obtaining a *100% reimbursement of all costs* associated with vehicular timing belt
 20 failures, including lodging, meals, and car rentals for Class members, as well as an extended
 21 warranty. Mr. Warshaw served as a contributor for The Rutter Group Federal Civil Trials and
 22 Evidence and the upcoming Rutter Group publication, *Civil Claims and Defenses*, Practice
 23 Guides relating to California consumer protection statutes. Warshaw Decl., ¶¶ 6-9, 11.

24 Mr. Warshaw, with co-counsel is supervising the document review in the *In Re TFT-LCD*
 25 litigation which involves in excess of 6 million documents in multiple languages and a review
 26 team spread across the country. Warshaw Decl., ¶ 8. He is also currently managing the document
 27 review and negotiating Electronically Stored Information ("ESI") protocols in the *In Re CRT*
 28

1 Antitrust Litigation matter. He currently serves as Co-Lead Class Counsel in the aforementioned
 2 *Wolph v. Acer America Corp.* litigation. *Id.*

3 **2. Hausfeld LLP (“Hausfeld”)**

4 Hausfeld is widely acknowledged to be one of the nation’s most prominent plaintiffs’
 5 class action firms, and its attorneys possess wide-ranging expertise in class action litigation that
 6 they will bring to bear in this matter. Hausfeld attorneys have been repeatedly recognized as
 7 leaders in the class action bar by publications such as *The New York Times* and *The Wall Street*
 8 *Journal*.

9 Hausfeld is currently serving as Co-Lead Counsel in thirty-five major national class action
 10 cases, including several cases involving fraudulent advertising, breach of warranty, and other
 11 claims similar to those herein. Members of the firm have achieved notable recent successes,
 12 including in this District, in terms of settlements and leadership appointments, as follows:

13 *In re International Air Transportation Surcharge Antitrust Litig.*,
 14 (“Air Passenger”). Case No. M:06-cv-01793-CRB, MDL No.
 15 1793 (N.D. Cal.). Hausfeld was appointed by the Hon. Charles R.
 16 Breyer as Interim Co-Lead Counsel on behalf of thousands of air
 17 travellers around the world against British Airways and Virgin
 18 Atlantic Airways for fixing prices of air passenger transportation to
 19 and from the UK to all long-haul destinations in the world. This
 20 matter settled in 2009 for approximately \$190 million.

21 *Ross v. Trex Co., Inc.*, No. C 09-670 JF (PVT) (N.D. Cal.).
 22 Hausfeld is one of the Class Counsel in this matter where the Hon.
 23 Jeremy Fogel approved a nationwide settlement providing for
 24 replacement of defective decking products as well as cash labor
 25 payments.

26 *In re Transpacific Passenger Air Transport Antitrust Litig.*, 3:07-
 27 cv-05634 (N.D. Cal.). In 2009, Hausfeld was appointed by the
 28 Hon. Charles R. Breyer as Interim Co-Lead Counsel for a putative
 29 class of direct purchaser plaintiffs in this antitrust class action
 30 alleging a conspiracy by airlines to fix the prices of passenger fares
 31 and/or fuel surcharges for trans-Pacific air passenger transportation
 32 services to and from the United States in violation of the federal
 33 Sherman Act. The Court recently denied most of the Motions to
 34 Dismiss in the case. *In Re: Rubber Chemicals Antitrust Litig.*,
 35 Master Docket No. C-03-1496 (N.D. Cal.). In 2006, in this matter
 36 before the Hon. Martin J. Jenkins, Hausfeld lawyers, serving as
 37 Co-Lead Counsel, settled the direct purchaser class’s global price-

1 fixing claims with defendants Flexsys N.V., Flexsys America L.P.,
 2 Akzo Nobel Chemicals International B.V., Akzo Nobel Chemicals,
 3 Inc., Crompton (now Chemtura) and Bayer for more than \$300
 million.

4 *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537 (W.D. Wa. 2009)
 5 (“ChoiceDek”) Hausfeld served as one of the Class Counsel in a
 6 nationwide class action settlement involving defective decking
 7 consisting of approximately 140,000 consumers. The settlement
 provided free deck cleanings and, if mold returned, replacement
 product for affected consumers. While the settlement claims are
 8 still being processed, the total value of the settlement is estimated
 to be between \$25 and \$50 million.

9 *In re Vitamins Antitrust Litig.*, MDL No. 1285 (D.D.C.). Hausfeld
 10 lawyers served as co-lead counsel for two certified classes of
 11 businesses that directly purchased bulk vitamins and were
 12 overcharged as a result of a ten-year global price-fixing and market
 13 allocation cartel. Chief Judge Hogan approved eight major
 14 settlements between certain vitamin defendants and the Class
 15 Plaintiffs, including a landmark partial settlement of \$1.1 billion.
 In a later trial before Chief Judge Hogan concerning unsettled, a
 federal jury in Washington unanimously found the remaining
 defendants liable for participating in the cartel and ordered them to
 pay approximately \$50 million which was trebled to \$150 million
 under the federal antitrust laws.

16

17 Hausfeld’s lawyers have garnered significant praise from District Court judges, including
 18 in California. In *Air Passenger*, for example, the firm was praised by District Judge Charles R.
 19 Breyer of the Northern District of California for its efforts in achieving “really, an outstanding
 20 settlement in which a group of lawyers from two firms coordinated the work . . . and brought an
 21 enormous expertise and then experience in dealing with the case.” The Court also stated that the
 22 firm’s lawyers are “more than competent. They are outstanding.” See Pizzirusso Decl., ¶ 5.
 23 Similarly, in *Four In One Company, Inc. v. SK Foods*, 08-cv-03017, 2009 WL 747160 (E.D. Cal.,
 24 March 20, 2009), District Judge Morrison C. England Jr. of the Eastern District of California
 25 praised the Hausfeld firm for having “the breadth of experience, resources and talent necessary to
 26 navigate a case of this import.” In that case, several firms were seeking appointment as interim
 27 lead counsel. The court held that “[a]lthough there [was] no question that the other firms
 28 proposed as co-lead counsel are also well qualified,” Hausfeld and one other firm “st[ood] out

1 from the rest," leading the court to appoint Hausfeld and the other firm as Interim Co-Lead
 2 Counsel. *Id.* at *3.

3 Additional details on the firm, including its work on consumer rights and in other
 4 significant litigation, are supplied in its Firm Resume (*see* Pizzirusso Decl., Exh. A) and on its
 5 website, located at <<http://www.hausfeldllp.com>>.² The Hausfeld attorneys that have worked on
 6 this case from its inception, and that will continue to staff this matter, include (but are not limited
 7 to) the following experienced class action attorneys:

8 **Michael P. Lehmann**, the head of Hausfeld's San Francisco office, has 33 years of
 9 experience in complex and class action litigation, with a practice that has ranged from class action
 10 litigation, to business litigation on behalf of individual clients, to extensive regulatory work
 11 before federal, state, and international bodies, to domestic and international arbitration. Prior to
 12 joining Hausfeld, Mr. Lehmann had worked at what became Furth Lehmann LLP, where he
 13 eventually served as Managing Partner. In recent years, he has served as co-lead counsel in
 14 numerous class action cases, including in this District, in numerous state court actions in
 15 California, and in various national class actions around the country. Mr. Lehmann played a major
 16 role in a number of the most important recent multidistrict class actions, including: *In re*
 17 *International Air Transport Surcharge Antitrust Litig.*, MDL No. 1793 (N.D. Cal.) ("Air
 18 *Passenger*"); *In re Transpacific Passenger Air Transportation Antitrust Litig.*, MDL No. 1913
 19 (N.D. Cal.); *In re Municipal Derivatives Antitrust Litig.*, MDL No. 1950 (S.D.N.Y.); *In re*

20
 21 ² With respect to pro bono work, members of the Hausfeld firm pioneered the efforts on behalf of
 22 Holocaust victims to recover a portion of their family's assets that were wrongfully taken from
 23 them by certain Swiss Banks and their German collaborators during World War II. In total, \$1.25
 24 billion in assets was recovered for these victims. Hausfeld lawyers also represented the largest
 25 group of survivors and their families who had been forced into slave labor for German companies
 26 during World War II. Hausfeld's efforts resulted in an agreement by these companies and the
 27 German Government to create a fund of \$5.2 billion from which individual payments were made
 28 to victims wherever in the world they resided. Hausfeld lawyers additionally litigated a case
 against the government of Japan on behalf 200,000 women that had been forced into prostitution
 by the Japanese military during World War II. These so-called "comfort women" were
 systematically held against their will and raped by Japanese military personnel during Japan's
 conquest of Southeast Asia. Additionally, Hausfeld lawyers represented survivors of the 1921
 Tulsa Race Riot.

1 *Publication Paper Antitrust Litig.*, MDL No. 1631 (D. Conn.); *In re High Pressure Laminates*
 2 *Antitrust Litig.*, MDL No. 1368 (S.D.N.Y.), and *In re Graphics Processing Units Antitrust Litig.*,
 3 MDL No. 1826 (N.D. Cal.).

4 **James Pizzirusso**, the head of Hausfeld LLP's Consumer Protection practice group, has
 5 extensive experience in class action litigation. He currently serves as court-appointed lead or
 6 interim lead counsel in two major class actions in this district: *See, e.g., Wolph v. Acer America*
 7 *Corp.*, 272 F.R.D. 477 (N.D. Cal. 2011) (certifying nationwide class action involving defective
 8 and false advertised computers) and *In Re Sony PS 3 "Other OS" Litigation*, Case No. C 10-1811
 9 RS (N.D. Cal.), and has had significant roles in other California consumer class actions including
 10 *In re iPod Cases*; JCCP No. 4355 (San Mateo County, California) (nationwide settlement on
 11 behalf of purchasers of iPods which contained defective batteries approved in 2005).

12 He has served as Lead or Class Counsel in 4 other major nationwide class actions that
 13 have settled in the last two years involving approximately \$75-\$100 million in cash and other
 14 relief including: *Radosti v. Envision EMI, LLC*, --- F.Supp.2d ----, 2011 WL 159662 (D.D.C.
 15 January 19, 2011) (granting nationwide class certification and approving class settlement
 16 regarding misrepresented inauguration program); *In re Tyson Foods, Inc., Chicken Raised*
 17 *Without Antibiotics Consumer Litigation*, 1:08-md-01982-RDB, 2010 WL 1924012 (D. Md.
 18 May 11, 2010) (granting nationwide class certification and approving class settlement over falsely
 19 labeled chicken products); *Ross v. Trex Co., Inc.*, No. 5:09-CV-00670, 2009 WL 2365865 (N.D.
 20 Cal. July 30, 2009) (granting nationwide class certification and preliminarily approving class
 21 settlement, later finally approved, involving defective decking products); *Pelletz v. Weyerhaeuser*
 22 *Co.*, 255 F.R.D. 537 (W.D. Wash. 2009) (granting nationwide class certification and approving
 23 settlement regarding defective decking products).

24 In March 2010, *Lawdragon Magazine* profiled Mr. Pizzirusso's practice in its "Lawyer
 25 Limelight."³ He has served as an adjunct professor at George Washington University, has
 26

27 ³ <http://www.lawdragon.com/index.php/newdragon/fullstory/lawyer_limelight_james_pizzirusso/
 28 >

1 published several articles, and presented on numerous topics involving class actions and
 2 consumer protection law. Pizzirusso Decl., ¶¶ 8-11.

3 **B. PSWP AND HAUSFELD WILL BEST BE ABLE TO REPRESENT THE
 4 PUTATIVE NATIONWIDE CLASS**

5 **1. PSWP and Hausfeld have performed significant work in investigating
 6 and prosecuting this case.**

7 The Court should consider the work that Hausfeld and PSWP have already performed in
 8 investigating and prosecuting this case. Fed. R. Civ. P. 23(g)(1)(A). The Advisory Committee
 9 Notes (2003) provide that the investigatory and analytical efforts of counsel are an important
 factor in appointing lead class counsel:

10 [i]n a case with a plaintiff class, the process of drafting the
 11 complaint requires some investigatory and analytical effort, tasks
 12 that strangers to the action most likely will not have undertaken.
 13 All other things being equal, when an attorney has performed these
 14 or other investigative and analytical tasks before making the
 15 application for appointment, he or she is in a better position to
 16 represent the class fairly and adequately than attorneys who did not
 17 undertake those tasks.

18 MOORE'S FEDERAL PRACTICE § 23.120[3][a] (3d. ed. 2007).

19 PSWP and Hausfeld have filed a comprehensive, 32-page Complaint detailing their
 20 allegations and claims. While this is the only Complaint on file at the moment, PSWP and
 21 Hausfeld anticipate that additional Counsel may also file similar cases based, at least in part, on
 22 the extensive preliminary work already completed by PSWP and Hausfeld. PSWP and Hausfeld
 23 are uniquely situated to efficiently prosecute this case based on the information they have already
 24 received and reviewed, their familiarity with the claims, and their contacts with affected class
 25 members.

26 **2. Hausfeld LLP and PSWP have the experience necessary to serve as
 27 Interim Lead Class Counsel and have extensive knowledge of the
 28 applicable law.**

29 Courts throughout the country have appointed PSWP and Hausfeld and their attorneys as
 30 class counsel in hundreds of class actions, including many in this district. Pizzirusso Decl., ¶¶ 4,
 31 7; Warshaw Decl., ¶ 8. Many of these appointments were in consumer fraud cases such as this
 32 one, and these cases alone have led to hundreds of millions of dollars in cash relief to affected

1 consumers, plus additional equitable relief. *Id.* Class members will benefit by the appointment of
 2 counsel who have the experience of devising a fair settlement structure and claims protocol in
 3 similar cases. For example, in granting final approval in *Pelletz*, a case in which Hausfeld was a
 4 lead counsel, Judge Coughenour of the Western District of Washington found that the settlement
 5 provided “substantial benefits” to the Class without the delay, expense, and risk of litigation.
 6 *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542-43 (W.D. Wash. 2009). PSWP’s and
 7 Hausfeld’s vast experience in this area of the law is described in further detail in the
 8 accompanying Declarations and the firms’ resumes. PSWP’s and Hausfeld’s extensive
 9 experience in this area of law, combined with their successful resolution of similar cases,
 10 demonstrate their unique qualifications to serve as lead counsel here.

11 **3. PSWP and Hausfeld have the staffing and resources necessary to
 12 aggressively prosecute this case.**

13 The Court should also consider, in part, the resources counsel will commit to representing
 14 the Class. Fed. R. Civ. P. 23(g)(1)(A)(iv). A class is fairly and adequately represented where
 15 counsel are qualified, experienced, and generally able to conduct the litigation on its behalf. *See,*
 16 *e.g., Wiener v. Dannon Co.*, 255 F.R.D. 658, 672 (C.D. Cal. 2009); *In re NASDAQ Market-*
 17 *Makers Antitrust Litig.*, 169 F.R.D. 493, 512 (S.D.N.Y. 1996) (class counsel satisfy adequacy
 18 requirement where they are able to prosecute the action vigorously). As a truly international law
 19 firm, with twenty-three lawyers in its offices in San Francisco, Washington D.C., and
 20 Philadelphia, as well as in London and joint ventures in Asia and South America, Hausfeld is
 21 well-situated to prosecute a nationwide case such as this one. Similarly, PSWP has fourteen
 22 attorneys in offices in Los Angeles and San Francisco and extensive experience litigating claims
 23 in the federal courts in California.

24 In addition to their lawyer professionals, who have developed national and international
 25 reputations for top quality work, these firms also maintain staffs with dozens of paralegals,
 26 investigators, litigation support staff, and others. Two of PSWP’s attorneys will also be actively
 27 involved in this litigation. These attorneys are Daniel L. Warshaw and Bruce L. Simon, both of
 28 whom have extensive experience in complex litigation and class action cases and have obtained

1 favorable results for their clients in dozens of matters. Two of Hausfeld's attorneys are also
 2 actively involved in all facets of this litigation. The lead attorney on the case is James J.
 3 Pizzirusso, who is highly experienced in economic injury product defect law, and has served in a
 4 leadership capacity in numerous cases. Pizzirusso Decl., ¶ 8. Supporting him is his partner,
 5 Michael P. Lehmann, who has extensive experience in complex class action cases, including
 6 numerous cases involving consumer fraud claims. *Id.* at ¶¶ 9-10.

7 PSWP and Hausfeld also have the financial resources necessary to represent the Class, and
 8 will commit the resources necessary to litigate this case vigorously to its conclusion. Pizzirusso
 9 Decl., ¶ 12; Warshaw Decl., ¶ 10. PSWP and Hausfeld have already committed the full resources
 10 of their firms, including the time and efforts of five of their senior attorneys, to perform legal
 11 research and fact investigation in this case, and will continue to do so. Accordingly, PSWP and
 12 Hausfeld easily satisfy the adequacy requirement of Rule 23(g).

13 **4. PSWP and Hausfeld will work cooperatively with all other interested
 14 counsel to achieve the best result possible for the Class.**

15 The Court may also consider any other factors that are relevant to the appointment of lead
 16 counsel. Fed. R. Civ. P. 23(g)(1)(B). Here, one important factor is PSWP's and Hausfeld's
 17 demonstrated ability to work efficiently and cooperatively with co-counsel.

18 This case may eventually involve plaintiffs represented by several firms. Therefore, it is
 19 important that lead counsel give voice to all interested parties and be capable of working
 20 cooperatively to forge consensus when necessary. PSWP is serving in a co-lead capacity in the
 21 *TFT-LCD* case, which involve large Executive Committees interfacing with the indirect purchaser
 22 plaintiffs' counsel. Similarly, in settling the *ChoiceDek*, *Tyson*, *Envision*, and *Trex* cases in the
 23 last year, Hausfeld showed these very qualities in working with many different firms involved in
 24 those cases. Further, as demonstrated in their firm resumes, Hausfeld and PSWP have worked in
 25 a leadership capacity on countless nationwide cases involving a number of firms with
 26 demonstrated success.

27 Thus, by appointing PSWP and Hausfeld, the Court will be assured that Co-Lead Counsel
 28 have the knowledge and standing necessary to include any other potentially interested parties and

1 act upon consensus views, thereby minimizing conflicts that can otherwise hamper complex,
2 nationwide litigation such as this.

3 **V. CONCLUSION**

4 PSWP and Hausfeld have expended significant time and independent effort developing
5 this case and are fully committed to reaching a favorable resolution for aggrieved consumers.
6 They have the experience and resources necessary to serve as Lead Counsel, particularly given
7 their successful resolution of similar cases. For all these reasons, the Court should appoint PSWP

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 and Hausfeld as Interim Lead Class Counsel.

2 DATED: June 17, 2011
3

4 By: _____ /s/
5 Daniel L. Warshaw

6 CLIFFORD H. PEARSON (Bar No. 108523)
7 cpearson@pswplaw.com
8 DANIEL L. WARSHAW (Bar No. 185365)
dwarshaw@pswplaw.com
BOBBY POUYA (Bar No. 245527)
bpouya@pswplaw.com
9 **PEARSON, SIMON, WARSHAW & PENNY, LLP**
10 15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

12 JAMES J. PIZZIRUSSO (pro hac vice)
jpizzirusso@hausfeldllp.com
13 **HAUSFELD LLP**
14 1700 K Street NW, Suite 650
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201

16 BRUCE L. SIMON (Bar No. 96241)
bsimon@pswplaw.com
17 **PEARSON, SIMON, WARSHAW & PENNY, LLP**
18 44 Montgomery Street, Suite 2450
San Francisco, California 94104
Telephone: (415) 433 9000
Facsimile: (415) 433 9008

20 MICHAEL P. LEHMANN (Bar No. 77152)
mlehmann@hausfeldllp.com
21 **HAUSFELD LLP**
22 44 Montgomery Street, Suite 3400
Telephone: (415) 633-1908
Facsimile: (415) 693-0770

23 Attorneys for Plaintiff Joshua Kairoff and All Others
24 Similarly Situated